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Supreme Court of the United States

October Term, 1970

No. 1149

WILLIAM J. DAVENPORT,

Petitioner,

vs.

CITY RENT and REHABILITATION ADMINISTRATION of the City of New York, JOHN V. LINDSAY, as Mayor of the City of New York,

Respondents.

PETITIONER'S BRIEF SEEKING REHEARING OF PETITION FOR WRIT OF CETRIORARI.

WILLIAM J. DAVENPORT, *Pro Se*
324 Allaire Avenue
Leonia, New Jersey 07605
(201) 944-1174

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Statement

PETITIONER seeks rehearing of his petition for a writ of certiorari, and reversal of the ORDER without opinion, of this court denying his petition, which order was dated March 8, 1971. The purpose of this application is to obtain a first hearing of the original facts underlying this action, not in any manner to cause delay.

The actions hereto involved are:

Statement

(a) Dismissal without trial as "insufficient for federal trial" an original complaint 68 CIV 4984. Which in appeal was upheld, the higher court specifying the deficiencies of the complaint as presented.

The district court simultaneously dismissed the subpoena by which petitioner sought access to the records and statement of charges against him which he has never seen, or had stated to him.

(b) Dismissal without trial as "Res Judicata," the replacement action of the former complaint, stating the prior dismissal to be by definition "CONSIDERATION UPON THE MERITS" of the complaint. This court simultaneously dismissed petitioner's subpoenas by which he again sought the records necessary to proper presentation of his complaint to the court for consideration.

Appeal therefrom was similarly dismissed without trial, as a consequence of petitioner seeking to approach the court to obtain a hearing of court orders based upon false allegations of defense counsel. No reason thereto was given, although a secretary of one justice referred to extreme prejudice of the court.

There has been no full presentation of the complaint and record, there has been no consideration of the court of the merits thereto. There has been no answer to charges of petitioner, by respondent, except to claim rules of the court to cause dis-

missal of the action, and to falsely state or imply as to occurrences in other courts, which improperly influenced the sitting courts, being in every instance paraphrased in the court decisions.

Further there has been no Rent Administration hearings to determine the facts.

Further, petitioner seeks here to be relieved of penalties against him, where there is no charge placed against him, no infraction of law by him, no specification of law as alleged by respondent, and no authority of respondent under the law to so order the penalties. And where the responsibility for proper performance of function is specifically assigned by law to respondent.

Questions Presented

The first question NOW before this court is whether petitioner can obtain from this judicial system the first rudiment of justice, which is a proper hearing of his complaint; OR CONVERSELY, whether as a citizen in complete compliance with law he shall be denied by THIS JUDICIAL SYSTEM every protection stated in the Constitution which this nation has risked his life to defend.

A second question quiescent herein is whether petitioner who is BLACK, and who is hereto the victim of a politically directed fraud for racial reasons by agents of government using the authority and power of their offices thereto, has any defense within our governmental system.

A third question, already existent in the original brief, is whether petitioner shall be deprived of his real property and his rights to own property as specified by law, solely on unlawful orders of government agents, without cause, without charges against him, and without opportunity to be heard in his own defense.

Facts

IT IS FACT OF DOCUMENTED RECORD that relative to all questions of this complaint that petitioner is fully compliant with law, but is being penalized to the maximum conceivable in consequence thereto by assumed authority, upon assumed but false charges, according to assumed but non-existent specifications of law, by a police authority of the State and City of New York, without a first hearing to determine the facts.

IT IS A FACT OF RECORD that petitioner has continually sought statement of the charges against him and a hearing in which the facts might be lawfully determined, by every known procedure available in law for seven years and that as yet THERE HAS BEEN NO HEARING, or opportunity given him to answer, presenting and examining evidence and witnesses under oath.

IT IS A FACT OF RECORD that in every prior proceeding, the record and administrative charges have been kept secret from petitioner.

IT IS A FACT OF RECORD that every prior court has EVIDENCED acceptance of the RE-

Facts

SPONDENTS' ALLEGATIONS as petitioner's complaint, paraphrasing them as its decision. NO COGNIZANCE of the actual complaints of petitioner has been expressed by any prior court. It appears that the courts have taken shortcuts which deny true perspective.

IT IS A FACT OF RECORD that there has been NEITHER TRIAL in these FEDERAL COURTS, nor has petitioner been permitted to present his complaint in full, the courts denying him access to essential public records kept secret by respondent. Nor has respondent actually answered the statement of charges presented.

Therefore there is no basis for the finding of the District Court of "Res Judicata," where there has been no full presentation, no consideration thereupon, and no decision relative thereto.

(It is presumptive and redundant but necessary of petitioner to inform this court that Res Judicata refers to a "prior decision after consideration of the merits," which no record can show in these presentments to the courts.)

This COURT IS ASKED TO TAKE COGNIZANCE of the following true and essential facts, with prior and personal knowledge of the patterns of American racial injustices and the present moment of history.

(a) This true fact of motive cannot be proven, but: Petitioner is a Negro, whose life was risked under fire as a Merchant Marine Radio Officer

in this nation's defense, present at Normandy on D-Day of WW 2, and torpedoed shortly thereafter. The papers have sought to present a truth which is that this entire situation is a fraud, created by political machination and motive, with a purpose of destroying petitioner's potential of BLACK LEADERSHIP, and simultaneously steal his real wealth and security for the benefits of the political-criminal perpetrators thereto.

(b) BUT PROVABLE OF DOCUMENTED RECORD is that the entire series of allegations by respondent fraudulently claims specification of law, authority of law, and facts of record. Further that every reply of respondent attorney to the courts has in some manner misdirected the court by fraudulent statements of prior occurrence, or the issue involved.

(c) The effect of these unlawful orders; supported by the courts consistent refusal to provide petitioner adequate opportunity to present his claims and necessary proofs in a first hearing where he is informed of the charges against him and given opportunity to answer, presenting and examining evidence and witnesses under oath; denies him both the right of ownership of real property, and any right of peaceful petition for redress in the courts. In simple fact, this procedure DENIES PETITIONER DUE PROCESS OF LAW AT LEVEL.

(d) A consequence of such administrative politically directed policy involving racial eth-

nics in New York City is obvious in an examination of the changes of ownership percentages of the real property known as "Harlem," where during the past fifteen years approximately one out of three black owners has been forced to expire, reducing the ownership percentage of that land area from approximately 58% to approximately 37%.

What is less visible is the financial-sociological destruction of these enterprising members as a community leadership class has, which is completely inverse to the normal traditional American-Democracy independent middle-class responsible members of community development, by which the ethnic groups normally enter the mainstream of American life. And also unseen, is the damage to the ethnic group, and the consequent damage to the major social system.

(c) It can be shown of record, that this racially oriented, political and criminal misuse of the authority of government is a total fraud, hidden in bureaucratic files and maintained by the entire machinery of government. In which petitioner has been ordered deprived of real property with a potential value of greater than Two Hundred Thousand ($200,000.00) Dollars, which represents twenty years of his labor and investiture, the security of his family, and his savings toward his own support in future years. That this has been done as a stated penalty where no charges have been stated, by an agent of government who has no

authority of his office to so order, alleging specifications which do not exist of a law which was created subsequent to the act alleged. And which police authority orders were given retro-effectivity to supercede both the prior administators' approvals and statutory provisions of previously existent law.

Further every every legal allegation presented the courts by defendant, upon which the courts have found against plaintiff-petitioner hereto, has been either a fraudulent misrepresentation, or undue favoritism granted by the court to a representative of government, which bias determined the issue.

All this has been done solely because petitioner is a BLACK REPUBLICAN, who has refused to act as a blackface ward-runner for the New York City Reform Democrats in an intra-party fight between New York City Hall and the Bronx Regular (Buckley) Democratic Party.

(f) This court might note these historical continuances of this petitioner's life (1) at age ten in 1934 petitioner was refused membership as a negro in the local YMCA and thus could not learn to swim in the "Y" pool, (2) at the age of twenty in 1944 petitioner, as Merchant Marine Radio Officer on the SS Ezea Weston, participated in the D-Day invasion of Normandy, the vessel being struck during that invasion by shellfire, and later torpedoed, with petitioner a survivor therefrom. (3) At

age thirty in 1954, petitioner unable to locate suitable employment as consequence of being an ex-officer and BLACK purchased the involved building seeking to establish his own business. (4) At age forty in 1964, this fraud by political agents of government seeking to steal his property was begun, in consequence petitioner has at this date been forced into functional bankruptcy, with the property in foreclosure and receivership. (5) At age fifty in 1974 the decision of this court to include him within the scope of law or exclude him therefrom will determine his status.

(g) This court should recognize that this petitioner is a highly unusual representative of the major mass of small property owners in New York City, the remainder thereto either having been forced into bankruptcy or discouraged by the continually negative attitude of the courts to examine and relieve their just complaints. And further, that the entire housing market of New York City shall be affected by this court's decision in this action.

(h) This court should also recognize the currently spreading use of Rent Control Laws in other states and areas, and the ultimate effect which will be excessive political control of the wealth of the citizenry.

Argument

Petitioner is entitled to a hearing of the issue, that a proper judgment of law based upon the facts may be made. The record can show no such hearing in which these issues have been clearly stated, and evidence and witnesses examined under oath. This court is the last resort, and denial of this petition constitutes the tacit approval of this court for the grossest misuse of government authority, denying this petitioner any availability of the protection of law.

Conclusion

This court should grant certiorari, and with urgent speed examine the questions and issues herein in the most intimate detail possible, ordering criminal prosecution of petitioner if he is guilty of the fraud for which he is herein civilly penalized, or correction of the injury done him if the respondent is guilty of the criminal misuse of his office herein charged by petitioner.

Respectfully submitted,

s/ William J. Davenport
Attorney Pro Se
324 Allaire Ave.
Leonia, N.J. 07605
(201) 944-1174